

ORIGINAL

BEFORE THE

Federal Communications Commission

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WASHINGTON, DC 20554

APR - 4 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In Re Applications of

LIBERTY CABLE CO., INC. and
BARTHOLDI CABLE

For Private Operational Fixed
Microwave Service Authorizations and
Modifications

New York, New York

-) WT Docket No. 96-41
-)
-) File Nos.
-)
-) 708777 (WNTT370)
-) 708778, 713296 (WNTM210)
-) 708779 (WNTM385)
-) 708780 (WNTT555)
-) 708781, 709426, 711937 (WNTM212)
-) 709332 (NEW)
-) 712203 (WNTW782)
-) 712218 (WNTY584)
-) 712219 (WNTY605)
-) 713295 (WNTX889)
-) 713300 (NEW)
-) 717325 (NEW)

CORRESPONDENCE
FILE

Time Warner Cable of New York City's First Request for Production of Documents

Pursuant to Section 1.325 of the Commission's Rules, Time Warner Cable New York City ("TWCNYC") requests that respondent Liberty Cable Company, Inc. ("Liberty") make available for inspection and copying at the offices of Fleischman and Walsh, Suite 600, 1400 Sixteenth St., N.W., Washington, D.C., documents pursuant to the specifications set forth herein.

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I. GENERAL INSTRUCTIONS

1. This Request for Production of Documents ("Request") is continuing in nature, thereby requiring supplementation from time to time if, prior to hearing, Liberty should obtain any additional or supplemental documents responsive to this Request.

2. Liberty shall produce all such documents as are within its custody, possession or control or within the possession, custody or control of its consultants, accountants, attorneys, agents, or other representatives, or which are otherwise available to Liberty.

3. This Request requires that true copies of the documents be supplied to TWCNYC's counsel at the above-specified address if original documents are not made available for inspection and copying.

4. If Liberty should claim that any document or the identity of any document called for herein is privileged or otherwise non-discoverable, it must identify each such document in a separate schedule to be furnished to TWCNYC's counsel along with its responses to this Request. Such schedule shall include with respect to each such document: (a) the date of the document, (b) its author, (c) the person(s) receiving the document and any copies, (d) the nature of the document (e.g., letter, memorandum, etc.), and (e) the specific privilege claimed and the basis for such claim, or other reason the document is asserted to be non-discoverable.

5. Any objections to this Request are to be in writing and served upon counsel for plaintiff within the time period described by the Commission's Rules. Objections

shall be stated with sufficient specificity to explain fully the ground upon which the objection is made.

6. The items produced shall be organized and labeled to correspond with the numbered categories in this Request, or the selection of documents from files or other repositories shall be performed in such a manner as to ensure that the file or other source from which the document is obtained may be identified.

7. If any responsive document was in Liberty's possession, custody, or control, but has been disposed of, lost, discarded or destroyed, (a) identify each such document, specifying its author, addressee, date, subject matter, and all persons to whom copies were furnished, (b) describe the contents of each such document, (c) state when the document was in Liberty's possession, custody, or control, (d) state the date or approximate time of the disposition, and (e) state the reason for the loss, destruction, or discarding.

8. Unless otherwise specified, responsive documents created during the period January 1, 1994 through the present ("the relevant time period") shall be produced.

II. DEFINITIONS

1. As used herein, the term "document" shall mean the original and each non-identical copy (whether different from the original because of marginal notes, or other material inserted therein, or attached thereto or otherwise) of any written or graphic matter, however produced or reproduced, whether sent or received or neither, including drafts and both sides thereof, and including but not limited to: orders, papers, books, letters, correspondence, telegrams, cables, telex messages, memoranda, typed or handwritten notes,

notations, workpapers, transcripts, minutes, reports and recordings of telephone or other conversations, or interviews, or conferences or other meetings, maps, charts, surveys, plans, specifications, diagrams, photographs, affidavits, statements, summaries, opinions, reports, studies, analogies, evaluations, contracts, agreements, ledgers, journals, financial statements, statistical records, desk calendars, appointment books, diaries, expense accounts records, lists, tabulations, summaries, sound recordings, computer print-outs, data processing input and output, microfilms, and other records kept by electronic, photographic or mechanical means, and items similar to any of the foregoing, regardless of whether designated "confidential," "privileged" or otherwise.

2. As used herein the term "possession," "custody" or "control" shall include actual and constructive possession, custody or control. Any document which is not in your possession, custody or control, but with regard to which you have a right or opportunity to obtain possession from a third person, or which is otherwise subject to your control, is within your "possession," "custody" or "control."

3. As used herein, the term "communication" means any oral or written utterance, notation or statement of any nature whatsoever, by or to whomsoever made, including, but not limited to correspondence, conversations, dialogues, discussions, interviews, consultations, agreements and other understandings, between two or more persons, including any telephone conversation, regardless of whether such communication was designated "confidential," "privileged" or otherwise.

4. As used herein, the terms "refer to," "relate to," and "relative to" shall mean constituting, in whole or in part, concerning, discussing, identifying, stating, dealing

with, reflecting, embodying or embodied within, containing or contained within, pertaining to, connected with, communicating with or communicating about, pertinent in any manner whatsoever to, mentioning, supporting, or evidencing.

5. As used herein, the terms "all" and "any" shall be construed to include or refer to "any," "all," and "any and all" as necessary in order to bring within the scope of this Request all responses which might otherwise be construed to be outside its scope.

6. Unless otherwise established by context, the plural shall be construed to include the singular and the singular to include the plural.

7. As used herein, "evidences" or "evidencing" shall mean approving, indicating or probative of the existence or nature of.

8. As used herein, "each" shall be construed to include or refer to "all," "any" and "every" as necessary in order to bring within the scope of this Request all responses which might otherwise be construed to be outside its scope.

9. Unless otherwise established by context, the masculine gender shall be construed to include the feminine gender and the feminine to include the masculine.

10. As used herein, "person" shall mean or refer to the plural as well as the singular and includes natural persons, proprietorships, corporations, public corporations, municipal corporations, firms, associations, partnerships, joint ventures, or any other form of legal business or governmental department, unit, agency, association or subdivision.

11. As used herein, "statements" shall mean and be understood to include and encompass an oral declaration, a written declaration, signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other

recording, or transcription thereof, which is a substantially verbatim recital of an oral declaration made by the person making such declaration and contemporaneously recorded.

12. As used herein, "Liberty" shall mean or refer to the named respondent in the Hearing Designation Order in this proceeding, any corporate parents or affiliates; any officers, directors, employees, attorneys, or any other person acting on behalf of such Liberty with actual or apparent authority to so act.

III. DOCUMENTS TO BE PRODUCED

1. The document known as the "Internal Audit Report," and all attachments or exhibits thereto that was supplied to the Commission in conjunction with a letter from Henry M. Rivera dated August 18, 1995.

2. All other documents (including drafts or notes) that were used in conjunction with the preparation of the "Internal Audit Report."

3. The document described as "Exhibit 1" to the *Consolidated Opposition to "Petition for Waiver of the Commission's Rules" and Opposition to "Supplemental Filing to Emergency Petition for Stay"* filed with the Commission by Liberty on October 5, 1995. This document was also supplied to Michael Hayden, Chief of the Microwave Branch, in a letter dated October 11, 1995 from Lloyd Constantine, Esq.

4. The document described as "Exhibit 2" to the *Consolidated Opposition to "Petition for Waiver of the Commission's Rules" and Opposition to "Supplemental Filing to Emergency Petition for Stay"* filed with the Commission by Liberty on October 5, 1995.

This document was also supplied to Michael Hayden, Chief of the Microwave Branch, in a letter dated October 11, 1995 from Lloyd Constantine, Esq.

5. All drafts, notes and other documents used in the preparation of the document described as "Exhibit 1" to the *Consolidated Opposition to "Petition for Waiver of the Commission's Rules" and Opposition to "Supplemental Filing to Emergency Petition for Stay"* filed with the Commission by Liberty on October 5, 1995.

6. All documents constituting, relating to or referring to communications with the owners, developers or managers of the building known as the "Europa" with an address of 22 West 66th Street, Manhattan, New York City.

7. All documents constituting, relating to or referring to communications with the residents or prospective residents of the building known as the "Europa" with an address of 22 West 66th Street, Manhattan, New York City.

8. All documents referring to, constituting or memorializing any agreement by which Liberty obtained the right to provide Liberty's television service to the "Europa."

9. All documents referring or relating to any work performed or to be performed by Liberty or any contractor in Liberty's employ necessary to provide Liberty's television service to the "Europa."

10. All documents referring to or discussing the use of a coaxial cable running from 10 West 66th Street as the means of providing Liberty's television service to the "Europa."

11. All documents referring to or discussing the use of customer terminal devices (e.g. set-top boxes) or other equipment supplied by Liberty to provide Liberty's television service to the "Europa."

12. All documents discussing or referring to the ability of residents of the Europa to order pay-per-view, second outlets, remote controls, additional set-top boxes or any other service or equipment not provided to all of the units in the "Europa."

13. All documents discussing or referring to the presence or absence of any legal impediments to providing Liberty's television service to the "Europa" by means of a coaxial cable running from the building at 10 West 66th Street.

14. All documents discussing or referring to Liberty's decision to cease using a coaxial cable running from the building at 10 West 66th Street as a means of supplying Liberty's television service to the "Europa."

15. All documents created by Liberty that were given or were intended by Liberty to be given to any one or more of the residents of the "Europa," the manager of the "Europa," the developer of the "Europa," or any association of owners, tenants or residents of the "Europa."

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "A. H. Harding", written over a horizontal line.

Arthur H. Harding

R. Bruce Beckner

Christopher G. Wood

Fleischman and Walsh, L.L.P.

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Attorneys for Time Warner Cable
of New York City and
Paragon Cable Manhattan

Dated: April 3, 1996

CERTIFICATE OF SERVICE

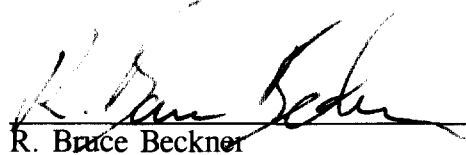
I, R. Bruce Beckner, hereby certify that a copy of the foregoing First Request for Production of Documents and First Interrogatories to Liberty Cable Co. was served this 3rd day of April, 1996, transmitted by facsimile and sent via first class mail, upon the following:

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R. Bruce Beckner